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NO. 20764

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ALHAMBRA MOTOR PARTS, et al.,
Petitioners,

vs.

FEDERAL TRADE COMMISSION,
Respondent.

PETITIONERS' OPENING BRIEF
ON
PETITION TO
REVIEW ORDER OF
FEDERAL TRADE COMMISSION

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INTRODUCTION

This is a petition to review a decision and order of the Federal Trade Commission.

The complaint (3-27) 1/ filed in 1957, charged Southern California Jobbers, Inc. (referred to as SCJ) with being the medium or instrumentality whereby the other respondents (who are jobbers of automotive parts) induced discriminating prices and discounts from their suppliers (22-23).

The answer (28-34) denied the essential allegations of the complaint and set up a defense of cost justification.

1/ Figures in parentheses refer to pages of the Transcript unless otherwise designated.

Thereafter, on June 20, 1960, the Trial Examiner rendered his initial decision (35-64) and recommended a cease and desist order. This was adopted as the order of the Federal Trade Commission (65-66).

A petition for review was filed by respondents and this Court, after argument, rendered its opinion on October 9, 1962.

Alhambra Motor Parts, et al. v. Federal Trade
Commission, 309 F.2d 213 (C.A. 9).

This decision affirmed that part of the order applying to the brokerage operation because the petitioners conceded the point. As to the warehouse operation, the order was set aside and remanded for further consideration of the cost justification defense and "the status of SCJ as the buyer and direct recipient of the price differential. "

Subsequently, on May 18-24, 1964, a new hearing was held before a Trial Examiner who rendered his "Supplemental Initial Decision on Remand of a Proceeding" on November 20, 1964 in which he found that (1) the "respondent jobbers (petitioners here) are the real purchasers within the meaning of the Robinson-Patman Act, (2) that complaint counsel have failed to establish that the price differentials granted to SCJ were not cost justified, or that the jobber members knew or should have known the differentials were not cost justified and (3) complaint counsel failed to establish that the respondents (petitioners here) induced or received a discrimination in price"(3782-3818).

Accordingly, the Trial Examiner ordered that the complaint

be dismissed (3817-3818).

Complaint Counsel appealed to the Commission and on December 17, 1965, the Commission, by a majority vote, Commissioners Elman and Jones dissenting, reversed the Trial Examiner and entered a new cease and desist order (4047-4052).

This petition seeks to review this last order of the Federal Trade Commission.

JURISDICTION OF THIS COURT

The several Petitioners conduct their businesses in the State of California (see Paragraph 1 of the Complaint, 6-20, incl. , admitted by Paragraph 1 of the Answer (28) and included in the findings of fact in the Initial Decision (35-45 Incl)). This Court has jurisdiction of the proceeding and of all questions to be determined therein, by virtue of 15 U.S.C.A. 45(c), which reads in part as follows:

"(c) Any person, partnership, or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the court of appeals of the United States, within any circuit where the method of competition or the act or practice in question was used or where such person, partnership, or corporation resides or carries on business, by filing in the court, within sixty days from the date of the service of such order, a written

petition praying that the order of the Commission be set aside. A copy of such petition shall be forthwith served upon the Commission, and thereupon the Commission forthwith shall certify and file in the court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order of the Commission. Upon such filing of the petition and transcript the Court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, evidence, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed, and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pendente lite. "

STATEMENT OF THE CASE

SOUTHERN CALIFORNIA JOBBERS, INC. is a cooperative corporation, duly organized under the laws of the State of California. Its Articles of Incorporation were filed December 6, 1935 (71, CX-2 2).

Its principal place of business is located at 1621 East 27th

2/ CX refers to Commission exhibit. RX refers to Respondents' Exhibit.

Street, Los Angeles, California (1984, 2042) where it maintains a warehouse of 37, 200 square feet of which 3, 000 square feet are devoted to office space (2042), and where it has thirty-seven employees, plus three more in supervisory positions (2042-3).

In the first quarter of 1964, the inventory in the warehouse was between \$573, 000. 00 and \$574, 000. 00 (2044; CX 226A & B).

At the time of filing the complaint, there were fifty-nine stockholder members of SCJ (35-45), each owning one share of stock (46). At the time of the second hearing, there were sixty-five stockholder members (2074). Each of these members is a jobber of automotive parts in competition with other jobbers (46), including both other members of SCJ (138, 806-807) as well as jobbers who are not members (138, 170, 499, 512, 519, 520, 529, 547, 550, 575, 587, 635, 641, 668, 683, 720, 726).

SCJ purchases merchandise from various suppliers and stocks that merchandixe in its warehouse. These purchases are made at regular warehouse prices, that is to say, the same prices as are paid by other warehouses (204, 237, 273, 281, 286, 290, 295, 317, 329, 336, 340, 350, 351, 352, 353, 356, 387, 389, 391, 392, 393, 412, 449, 470, 472, 486, 487, 610, 613, 624, 627, 661, 663, 664, 691, 692, 693, 710, 832, 1114, 1116, 1263, 1278, 1290, 1378, 1433).

After the former order of this Court, SCJ discontinued all drop shipments (1205, 1206, 1378, 1433, 1889, 1933, 1934,

1939, 2021, 2077). There is no evidence to the contrary. ^{3/}

Mr. Jacobsen (1644) stated he knew that SCJ picked up merchandise and merely transferred it from one truck to another. But he was forced to admit that his knowledge was of an incident prior to October, 1962 which was the date of the earlier opinion of this Court (1646).

The Commission has found "that practice (drop shipments) apparently have been discontinued by S C J . . . " (4028).

The merchandise in the warehouse is paid for by SCJ and then sold to its jobber members in such quantities as they may order, SCJ performing the usual breaking of bulk and repackaging. Each member is billed for his purchases at jobber prices.

After deducting the cost of operation which is 6 or 7 per cent of the total, the remaining profit is credited to the members quarterly in proportion to their purchases of the several lines (2097-2098).

The Commission states "the price differentials in issue here at this stage are confined to the warehouse distributor's discount of approximately 20 per cent from the jobber's price granted the respondents by their suppliers" (4028).

^{3/} Although complaint counsel, at the opening conference, disclaimed any question of compliance (1005), he later stated (2117) that the minutes of SCJ contained "indirect evidence" that might be considered "drop shipments or not drop shipments".

STATEMENT OF THE ISSUES

Petitioners contend that the cease and desist order of the Commission should be vacated and set aside and the complaint dismissed for the following reasons:

1. That there is no substantial or probative evidence to support the finding and conclusion that the jobber members, not Southern California Jobbers, Inc. , are the buyers of merchandise from the suppliers.
2. That complaint counsel utterly failed to support the burden of proof that the warehouse discount granted to Southern California Jobbers, Inc. was not cost justified.
3. That the Commission erred in failing to find and conclude that the distribution of net earnings to the stockholders of Southern California Jobbers, Inc. was within the exemption of Section 4 of the Robinson Patman Act.
4. That the order of the Commission in effect declares that a cooperative organization is per se an illegal organization which cannot be allowed to conduct business in the manner in which cooperatives have conducted business from time immemorial, and to that extent, the order is contrary to the law and the evidence and in excess of the powers granted to the Federal Trade Commission by the Congress.

THERE IS NO SUBSTANTIAL EVIDENCE TO SUPPORT THE FINDING THAT THE MEMBER JOBBERS ARE THE PURCHASERS OF MERCHANDISE FROM THE SUPPLIERS OF SCJ.

The Commission has found that the member jobbers of SCJ are the purchasers of the merchandise from the suppliers. The reasoning is that the cooperative is owned and controlled by the members through a Board of Directors and committees, that the sole purpose of the cooperative is to provide opportunities for advantageous purchasing that it sells to none except members, that the discounts are the property of the members and that SCJ acts as agent for its members.

This doctrine is an outgrowth of the decisions in the group buying cases where there was no warehouse and the individual orders of the members jobber was sent to the supplier who shipped directly to the member jobber. It was held in those cases that the jobber member was the purchaser and the supplier, the seller.

American Motor Specialties Co. v. F. T. C.

278 F. 2d 225 (2nd Circuit), Cert. Den.,
364 U. S. 884.

In that situation, the particular merchandise could be identified on the books of the seller and those of the jobber member as being shipped directly from supplier to jobber, so there was some basis for the conclusion.

But here the situation is different. SCJ buys in large

quantities, usually carloads or truck loads. The merchandise so bought is delivered to the SCJ warehouse and becomes part of the warehouse stock. Complaint counsel, throughout the hearing, tried to imply that orders from SCJ jobbers were transmitted directly to the suppliers and that specific merchandise was delivered to the jobber member, merely by shifting the package from an incoming to an outgoing truck (2077, 2117). Complaint counsel were given access to all of SCJ's records of purchase and sale. They called for such of these records as they selected and examined them at length (2118-2120).

But not one scrap of evidence was introduced to support the thesis. The testimony of Mr. Huffaker (1939), Mr. Dixon (2077-8) and Mr. Kardas (2021) stands undenied -- there is no such practice in SCJ. All merchandise goes into the warehouse stock until an order is received.

RX 35 and RX 36 provide a good illustration of one month's transactions in the merchandise of one supplier, five purchases at a total cost of \$8774. 79 and two hundred sixty-seven sales for the total sales price of \$3771. 31. Not a single purchase, as shown by these records, can be matched with a corresponding sale to a jobber member

So every element of a sale, that is to say, specified goods, unit or total price and privity of contract is entirely missing as between a supplier and the jobber member. And not even complaint counsel has contended that a supplier could look to the individual member for his money.

Of course, it is vital to the Commission's case that the jobber members shall be considered the purchasers. In Alhambra Motor Parts v. F. T. C., 309 F. 2d 213, this Court said:

"In answer to the Commission's complaint, petitioners advanced the defense of cost justification. Such a defense would not have been necessary, if S. C. J. rather than the jobber members had been found to be the buyer from the manufacturer" (5) Footnote 5: "In that event, since it was neither alleged, proved nor found that S. C. J. received a price discrimination as compared to competing warehouse distributors, no defense would have been required."

We submit that the mere fact that a corporation is controlled by its stockholders (as is every corporation and required by California law (Corporations Code §12600; 2105) is not enough to justify the holding that the jobber members are the purchasers from the manufacturers, especially when there is not one iota of evidence showing direct dealings between them.

It is to be anticipated that Commission Counsel will rely on the N P W and Monroe cases to support their argument on control. We believe these cases are distinguishable.

General Auto Supplies, Inc., v. Federal Trade Commission, 346 F. 2d 311 (CA-7).

This was a case of a limited partnership where the general

partner operated a warehouse in Atlanta and the limited partners were jobbers located in several states. About six per cent of the sales were made to jobbers who were not partners and 20 per cent of the sales were drop shipped to the limited partners.

The decision seems to be based on three factors:

- First: That there was such control by the limited partners as to hold that the partners were the buyers.
- Second: That the warehouse did not sell.
- Third: There was evidence to support a holding that the warehouse discount was not cost justified.

Monroe Auto Equipment Co. v. Federal Trade Commission, 374 F. 2d 401 (CA-7) Cert. Den.

Here, Monroe was charged with granting discriminatory prices to warehouses which in turn owned or controlled jobbing outlets. Cost justification was not pressed on appeal.

The jobbers were held to be the purchasers in a situation where one Hart owned a business which was both a warehouse and a jobbing outlet and three other jobbing stores. There were four other jobbing corporations with the same name. In each case, the same Hart was the principal stockholder, president and chairman of the Board.

In both cases, the Court rejected any argument based on the Crog decision.

Central Retail-Owned Grocers, Inc. v. Federal

This was a case of a cooperative which distributed its net earnings to its members, based on their purchases. The Commission charged that the distribution of earnings (which were part of the profits arising from the discount allowed the cooperative) were the equivalent of a brokerage or commission paid to a purchaser, and therefore a 2(d) violation. The Court rejected this contention, saying:

"It is apparent to us that the inference of the Commission to the effect that Central received commissions, brokerage or other compensation or allowances or discounts in lieu thereof from its suppliers was improperly drawn from comparisons of brokerage paid by such suppliers on sales which they made to brokers with the price reductions granted Central. The inference upon which the Commission's findings and order are based has no substantial evidence in the record to support it. Instead, the record convincingly shows that the payments made by Central to the suppliers were for merchandise which were bought upon its own credit and not upon orders of its members transmitted by it to the suppliers. The fact that Central, because of its strong purchasing power, was able to buy at favorable prices or upon discounts and allowances by its suppliers is not proof that Central was rendering a brokerage service. It

bought on its own order and on its own credit. It was billed by the suppliers and it paid the bills. . . . Reason does not permit our ignoring these facts in order to declare illegal, a worthy effort by a number of wholesale grocers, owned by retailers to reduce the ultimate sale prices to the consumer by entering into the arrangement with Central, which made them stronger in their competition with large chain stores." (Emphasis added).

And again the Court said:

"In the case at bar, the Commission would drive such groups out of existence."

The principles of the foregoing opinion apply to our case. Where the Court holds that there is no evidence to show distribution of earnings is an illegal (2(d)) brokerage, there is no evidence in Alhambra to show distribution of earnings by SCJ is an illegal (2(f)) discount granted by the suppliers.

We contend that N P W is not controlling here because (1) SCJ is a cooperative; (2) We have strong evidence of cost justification; (3) The indirect purchaser doctrine cannot be applied without putting the cooperative out of business; (4) SCJ sells more merchandise than comparable "independent" warehouses.

The Monroe case is distinguishable on similar grounds and also, we think, the case here is quite different from the Monroe situation where one man owned and operated both the warehouse and the jobbers.

We submit that the Commission cannot support its contention that distribution of cooperative earnings is an illegal discount to the jobber, any more than it could call it a "brokerage" in Crog.

If we are wrong in this contention, then Gulf and Western which operates 33 warehouses and 150 jobbing outlets is out of business. So is Colyears and so should be Crum and Lynn. Since the hearing in this case, the control of Crum & Lynn has passed to a manufacturer. And has there been any complaint filed against Featherstone whose president, Mr. Krumbholtz, testified (1835) that Featherstone tries to create "captive" accounts? Or against Chanslor & Lyon who finances jobbers(1594-5)?

Since the so-called independent warehouses have as much trouble selling customers of Colyears and Gulf and Western as to the members of SCJ (Livoni 1793), it would appear that there should be some action taken, if counsel are sincere in their argument that controls or vertical integration is forbidden (1155, 4102).

We think that A W D A has made the complaint against SCJ in a concealed attempt to drive a competitor out of business. As said by Commissioner Elman in his dissenting opinion (4091):

"Competition, in the antitrust sense, may be truly injured by a policy of law enforcement which preserves intact an inefficient, uneconomical and stratified system of distribution, and prevents the elimination of unnecessary middleman costs through the organization of cooperatives. 14/

"14/ As Corwin Edwards, a distinguished former

Chief Economist of the Commission, has pointed out in this context:

"Students of marketing generally agree that progress in distribution has lagged behind progress in manufacturing, that distributive methods are often wasteful, and that the opportunities to improve the efficiency of distribution are substantial. Accordingly, it is important to encourage rather than discourage experiment with distributive methods and distributive channels. Among the possibilities that might be explored are changes in the number of successful intermediate distributors and in the vertical extension of each, change in the kind and amount of distributive services rendered, and change in the number and variety of different distributive channels used. Prior to experiment, it would be rash to assert that the best system of distribution for industry generally or for a particular industry would be attained by an increase or decrease in vertical integration, by greater or less specialization in distributive function, by uniform or diverse methods of distribution. What is needed is opportunity to try various methods on competition with one another." Edwards, The Price Discrimination Law, 344 (1959).

The Commission, by its decision here, is aiding this

attempt to preserve a monopolistic situation, to keep all jobbers independent on warehouse distributors and to drive cooperatives to the wall (4078).

This intent will be disclaimed, but it is nevertheless true. Cooperatives cannot exist if deprived of both earnings and working capital.

Nor does it help the Commission to say that SCJ is only the agent of its members. Agent for what? Unless there is a specific transaction between supplier and jobber, there is no basis for any principal and agent relationship. In short, the agency argument begs the real question. Who is the purchaser?

Rowe, Price Discrimination under the Robinson-Patman Act (1962).

At Page 351, the author says:

"If the cooperative receives prices no lower than other distributors at the same functional level (even though lower than the price paid by unaffiliated distributors at the next level of distribution), no charge of discrimination could be raised but for the cooperative's affiliation with its members and their participation in its profits."

Mr. Patman himself indicates that the failure of a manufacturer to give a cooperative a warehouse discount, when the cooperative performs the functions of a warehouse distributor, would be an illegal discrimination in favor of the other warehouses.

See: A Complete Guide to the Robinson-Patman Act,
1963 Edition, page 23.

We submit that only SCJ, not its members, can be considered the purchaser from the supplier. It alone names the quantity and specific part numbers and is alone obligated to pay for the goods purchased. This obligation is only that of SCJ, and not of its members individually or collectively.

Since Congress has not forbidden cooperatives, this so-called indirect purchaser doctrine is only an unwarranted seizure of power which has the effect of lessening competition among warehouse distributors.

II

THE EVIDENCE FAILS TO SUPPORT THE BURDEN OF PROOF THAT THE WAREHOUSE DISCOUNT GRANTED TO SOUTHERN CALI- FORNIA JOBBERS, INC. WAS NOT COST JUSTIFIED.

The Commission has found as follows (4045):

"On the basis of the record as a whole, it is clear to a large extent SCJ's warehousing duplicated that locally performed by the manufacturer, and the cost savings, if any in sales to respondents, as distinguished from costs involved in sales to direct jobbers would not be significant -- certainly not sufficient to justify the price differentials of 20-plus per cent which are under consideration here. This conclusion is

particularly evident in the case of purchases from Standard Motor Products. " 4/

Bearing in mind that the burden of proof to prove that the warehouse discounts to SCJ was not cost justified, was on Complaint Counsel (See: Automatic Canteen Co. v. F. T. C., 346 U. S. 61; Alhambra Motor Parts, et al. v. F. T. C., 309 F.2d 213 (CA-9); Order, 4034), it is submitted that this finding is not supported by any substantial evidence. Rather, as said by Commissioner Jones (4098):

"The record in this case demonstrates that S. C. J. , in its capacity as a warehouse distributor, performed this comprehensive selling function in all respects in a manner substantially identical to unintegrated warehouse distributors. The record in this case also clearly demonstrates that these warehouse distributor functions effect substantial savings to manufacturers."

First of all, the Commission's statement of the cost saving features (Order, 4034) ignores and omits entirely the function of purchasing, warehousing merchandise and breaking bulk. The order does pick out isolated remarks of various witnesses as to some individual items but, on the whole, ignores other testimony

4/ The only testimony about Standard Motor Products is that of Alex Stern (175-229) given on June 22, 1959 and describes Brokerage business as does prior to that date. This has been entirely discontinued and all merchandise now goes through the warehouse.

of these same witnesses, all of whom were called by Complaint Counsel. Also, the Order draws comparisons between services rendered to independent jobbers and to SCJ members, overlooking the clear testimony of these same witnesses, that the customers of all warehouses got the same service and attention.

We will review the testimony of all the witnesses on this point. Mr. Bolander is quoted (1099-1102) as calling on SCJ jobber members at least as often as on independent jobbers.

But this witness also said (1116):

"Q. Do you render to SCJ any services that you do not render to the other warehouse?

"A. No. They receive the same services, the other warehouse as I give SCJ.

"Q. In other words, there is no advantage in favor of SCJ?

"A. No. That is correct.

"HEARING EXAMINER LEWIS: Do they perform the same services as the other distributor?

"THE WITNESS: As the other warehouse?

"HEARING EXAMINER LEWIS: The other warehouse distributors.

"THE WITNESS: Yes, they do.

"HEARING EXAMINER LEWIS: Do you call on the customers of the other warehouse distributors?

"THE WITNESS: Yes I do, your Honor.

"HEARING EXAMINER LEWIS: To the same

extent as the SCJ jobber members?

"THE WITNESS: Not to the same extent.

"HEARING EXAMINER LEWIS: What is the difference?

"THE WITNESS: Sales to SCJ members are greater, so I would spend more time with the SCJ jobbers."

Mr. Bolander also said that the SCJ warehouse saved Thermoid money (1086). If it did not exist, Thermoid warehouse requirements would be greater (1089); that the merchandise would not move as rapidly (1091); that SCJ performs the same services that he and his staff do for direct jobbers (1104); that sales through SCJ warehouse are satisfactory (1110); that the Annual Sales Meeting helps sales "tremendously" (1111); that SCJ effort saves time and money (1112); that when SCJ picks up at Thermoid, all freight is saved; that SCJ orders are substantially larger and larger orders are more economical; that SCJ carries a satisfactory stock of \$10 - 15,000.00 (1113); that SCJ redistributes catalogs and price lists (1118); that SCJ sales meetings are of substantial assistance in making sales (1119); that a warehouse distributor can deliver faster (1121); that fast delivery assists in making sales and saves money to Thermoid; that SCJ does everything a warehouse distributor should do (1123, 1136).

Mr. Fleer, of American Hammered, is quoted as calling on SCJ members the same as on direct jobbers of comparative size

(1213).

He also said that his salesmen call on all warehouse distributor jobbers customers the same as on the direct jobbers if they are large enough, based on potential volume (1160, 1214, 1290); that before using SCJ, he sold out 12 SCJ members as direct jobbers (1219) and SCJ got many new accounts for him (1225); that SCJ members "seem to know our programs before we get there" (1224); that SCJ does save money for American Hammered because, "we seem to be able to do a larger volume of business with less effort" (1230); that SCJ has a suitable building (1291) and stock of about \$20,000.00 (1292); finds SCJ jobbers adequately stocked (1293). No freight on SCJ sales, they pick up everything at our warehouse and that represents a substantial saving (1294); SCJ selling efforts assists sales and decreases selling expense (1294); SCJ assists in selling new members (1297); on catalogs SCJ is treated like all others (1298); was selling 10-15 SCJ members, but after putting merchandise in the SCJ warehouse, he sells 36 of them, a substantial increase (1298); the sales force was not increased (1299) but volume was: he is pleased with sales made through SCJ (1300); and at this point event Complaint Counsel seems to concede that a warehouse distributor that sells (a satisfactory volume) saves the manufacturer money (1310).

Mr. Chadwick of Standard Motor Products, is quoted as saying calls are made on SCJ jobbers with the same frequency as on any other jobbers (2031). This includes jobber customers of all his warehouses and irrespective of calls by warehouse salesmen

(2036), his calls include the jobber customers of Chanslor & Lyon and Mopex (2035). He also said that sales expense was not reduced by selling through SCJ or any other warehouse (2036-7). (This, however, does not include comparative volume of sales for a given period of sales effort.) Then he said the volume of sales through the SCJ warehouse was satisfactory (2037); that the SCJ account was the largest in the area (2040). From this, it appears that SCJ does a better selling job than Chanslor & Lyon in spite of their ten and one-half salesmen (Humphries 1514).

Mr. Costello, of Republic Gear Co., is mentioned to support a statement that salesmen call on SCJ jobbers or indirect jobbers regularly (1412) and that jobbers in area regularly pick up merchandise at Republic's warehouse (1406-7).

This witness also said, we do a little more for the independent jobber (1395); we don't spend the time with an indirect jobber as with a direct jobber (1396); was selling 12-14 SCJ jobbers (1401) but after his line was put in the SCJ warehouse, he is selling 90% of the member jobbers (1423); that various SCJ services save money for Republic (1415); that SCJ stock of \$20 - 25,000.00 is comparable to other warehouses (1421); that SCJ volume of sales is greater than the others (1422); that volume of sales rather than number of salesmen is the important thing (1422); that SCJ has increased our sales "exceptionally so" (1423); that SCJ helped him to get new outlets (1423); that SCJ stock increases Republic's merchandise without expense to Republic, that increased exposure helps sales and saves money; that he spends more time trying to

sell independent jobbers (1424); that SCJ open house helped increase sales (1425); that SCJ handling obsolescence saves manpower and freight (1430); that SCJ picks up all merchandise at the warehouse, thus Republic pays no freight (1432); that sales lunches helped sales (1433); that SCJ sells several thousand dollars worth of obsolete merchandise which saves cost of freight back to factory (1443); that SCJ bulletins help sales (1449).

Mr. Milligan, speaking of Dutch Brand, said many customers pick up merchandise at the warehouse (1359). He also said his warehouse would not break cases (1340); that a warehouse distributor would break cases to supply a jobber with 6 rolls of one and 4 of another; that the product is semi-perishable and deteriorates in hot weather (1340); a warehouse distributor can keep a jobber supplied without over stocking (1341); SCJ picks up merchandise, so no freight (1358); that he calls on all W D customers jobbers the same (1363-4); that SCJ distributes catalogs to its customers (1359); that SCJ saves money by buying case lots and selling piecemeal; that a public warehouse will not break cases and it costs money to break cases (1367); that there is a great saving in obsolescence and defective material (1370); quicker turnover in a warehouse eliminates obsolescence (1371); SCJ maintains an adequate stock (1374-5); larger than average, as SCJ does best volume (1375) and he sells to 12-15 warehouse distributors in Southern California (1334); that SCJ gives adequate sales help (1375).

William Webster, District Manager Federal Mogul. This

witness is referred to in the Order for the proposition that direct jobbers, if in close proximity to the Federal Mogul warehouse, pick up their merchandise as does SCJ (1259-60). This, it is argued, shows that SCJ pick up does not save any money. This conclusion is not sound because SCJ picks up for many jobbers who are not "in close proximity" to the warehouse. Their members are located from Fresno to the San Diego area (2045).

Mr. Webster is also cited for the proposition that his catalogs were distributed to all jobbers by direct mail (1261-62) which has never been denied.

This witness also testified that his sales increased after his products were sold through SCJ (1254); that he couldn't say how much was saved by selling through SCJ (1267), but he sold them, anticipating higher volume and got it (1272); that SCJ carries a \$50,000.00 inventory and does an adequate job of reselling (1272); that SCJ generally gives larger orders than other warehouse distributors and larger orders are more economical and represent savings to Federal Mogul (1274); that the SCJ sales effort saves him time as he doesn't spend as much time (1275); that SCJ pickup at Federal Mogul warehouse saves freight (1276); that SCJ stock frees Federal Mogul from filling small orders (1277); that availability and fast delivery is an advantage to the manufacturer (1278); that he formerly sold 65% of SCJ members, now sell 85-90% (1279); that his volume of sales has increased 35-40% (1280); none of his customers print catalogs (1281); all warehouse distributors, including SCJ, are supplied from the local warehouse (1283); that

the SCJ open house and sales lunches make all SCJ members available (1287) and both save him a lot of time (1288).

The Order quotes witnesses Huffaker (1940), Krumbholz (1826) and Tatum (1476-77) for the proposition that public warehouses charge 5-6% of sales and conclude that SCJ's warehousing could save the manufacturer no more. It is also said that "it is not clear" to what extent these manufacturers' warehouse break bulk. This conclusion is wholly unjustified. In the first place, the merchandise in the public warehouses and the manufacturers' warehouse still belongs to the manufacturer, whereas SCJ has bought and paid for the merchandise in its warehouse. And, as testified by the manufacturers' representatives as set out hereinabove, all the warehouse distributors buy from the local warehouses. Webster (1283) Milligan says: Our warehouse (1340) and public warehouses (1367) "do not break bulk" and that he wants to sell warehouse distributors because they can sell the jobber without overstocking (1341); that 65-70% of sales to warehouse distributors are made through the local warehouse; Republic Gear has its own warehouse which serves all the warehouse distributors in Southern California, including SCJ; Costello (1408); all Thermoid customers in the Los Angeles area are served from the local warehouse, including all warehouse distributors; Bolander (1082). So are the warehouse distributor customers of American Hammered Fleeer (1203). See also Morris Brown (461).

So much for the manufacturer people -- they all say that warehouse distributors in general and SCJ in particular save money

for the manufacturers.

Witnesses from other warehouses are of the same opinion.

Warehouse distributors save the manufacturers money (1461) and again "We do business with a lot of small orders and shipments that a normal warehouse doesn't have to put up with and we have a lot more returns to stock than a normal warehouse would have to put up with" (Tatum 1480).

In passing, this warehouse has only one real salesman as Mr. Tatum says, the other three are just order takers (1507).

Mr. Humphries, of Chanslor & Lyon, testified as follows, at page 1552:

"Q. Do you actually earn this 20 per cent by what you do for those that give it to you?

"A. Yes sir, I certainly believe we do. I don't believe that a manufacturer could do the selling that we do, perform the functions that we perform, carry the credit that we carry, bear the expenses of collection to which is attendant upon credit and do it as efficiently and as cheaply as we do. " 5/

Humphries also said warehouse distributors do much more than a fee warehouse (1561); that these services save money for the manufacturer (1584); that the sales effort saves money (1585);

5/ If it be argued, he is speaking only of Chanslor & Lyon, SCJ seems to outsell Chanslor & Lyon in the same lines (Chadwick (2040), Costello (1422), Webster (1274)) and so must save as much for the manufacturer.

carrying credit assists the manufacturer as it reduces the capital he must have in his business (1596); stock in warehouse saves money for manufacturer and helps increase sales (1609); sale of returned merchandise also helps (1609); those services fully justify the warehouse distributor's discount (1610).

Mr. Jacobson, President of Chanslor & Lyon, was not questioned on cost saving but he did say not all SCJ jobbers take the line because they have a better deal elsewhere (1654) and that the service given by SCJ members is what Chanslor & Lyon pays for (1662).

Paul Livoni of Crum & Lynn and President of A W D A, said at page 1718:

"Q. Do you earn it by way of what you do for those who give it to you?

"A. We sure think we do. We work awfully hard for it."

And further that services save money for the manufacturer (1733); the warehouse eliminates credit problems for the manufacturer (1733); that warehousing merchandise saves manufacturer money as it gives him a shipping and billing point nearer the customer (1774).

On the question of where the warehouse shall purchase, Mr. Livoni says the manufacturer determines whether it shall be the local warehouse or the factory (1775).

Sales efforts save substantial amounts (1778); maintenance

of warehouse stock assists manufacturer in getting greater volume of sales, breaking bulk, repackaging and shipping saves manufacturer money; it is more economical for a warehouse distributor to do this because he can combine smaller orders (1779). He further says Fram said SCJ could produce more volume (1784); that a warehouse distributor requirements (1785) would save the manufacturer money (1786); that he believes Crum & Lynn earns its discount (1786) on annual sales volume in Los Angeles area of \$1, 750, 000. 00 (1791).

This is about half of SCJ's volume (\$3, 378, 048. 00 CX 225) from a warehouse of about the same size (SCJ - 37, 200 square feet (2042), Crum & Lynn - 30, 000 square feet and 8, 500 square feet (1711)).

Robert L. Krumbholz, President Featherstone's, Inc. This witness is referred to (1826) establish the average fees charged by a public warehouse and his average turnover (1801).

Featherstone has an inventory of \$750, 000 in a Los Angeles warehouse containing 42, 000 square feet (1797). This warehouse gets a 20% off jobbers list because,

"We buy from the manufacturer. We warehouse the merchandise. We sell to the wholesaler, to the jobber. We ship to the jobber. We sell to the jobber. We have salesmen in the field." (1797).

On cost saving to the manufacturer, he also said at (1833):

"Q. Does the warehousing of merchandise

save the manufacturer money?

"A. Yes, sir.

"Q. A Substantial amount?

"A. Yes sir. "

And again the witness testified that when a warehouse buys in carloads or truck loads, it saves money for the manufacturer as compared to processing smaller orders (1834), and again that the real test of savings to the manufacturer is the volume of sales (1839).

William Steritz, of Car Controls, Inc.

This witness has a warehouse of 15,000 square feet (1843) with an inventory of \$485,000 (1852) with annual sales of four or five times that (1843) or from \$1,940,000 to \$2,425,000.

On the question of cost justification, this witness gave no significant testimony.

Jerry Lipscomb, a manufacturer's representative, was called to criticize SCJ's selling effort (1872) (1875). But he also said SCJ is a "prestige account" (1871) and that a competitor was spending more money than he could (1873, 1876, 1882) and the real trouble was that his supplier, Columbus, was having problems (1878), that a change of manufacturers made his customers, including SCJ members, unhappy (1878); that failure to get the program off the ground was largely due to failure of Columbus people and that he was trying to sell SCJ other lines and he felt SCJ could give satisfactory service (1878).

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There was nothing said about cost justification.

Carroll Wissler, Factory Representative of Sterling Aluminum.

The witness criticized the selling and servicing of the accounts by SCJ (1891).

However, sales to SCJ were discontinued in 1960 (1890). He also said when selling SCJ he had an agent and,

"I don't think the agent did his job or these things wouldn't have occurred" (1899)

and again that he made later sales calls on SCJ to see if they were interested in Sterling's proposition (1900-01), although Sterling was not in a position to take on a new distributor because of production trouble (1903, 1906).

This witness said nothing about cost justification.

Whitley Huffaker, President of SCJ, was not questioned about cost saving.

John F. Dixon, General Manager of SCJ, was not examined on cost savings as such but he did identify the exhibits (RX 36, A-L), detailing the business done with Stant Manufacturing Co. during the month of January, 1964.

These exhibits show a typical account and the individual purchases and sales and demonstrate more clearly than words, how the breaking of bulk packages and making small sales to jobbers involves substantial costs. It cannot be denied that if the supplier had made the same sales to the jobbers, its cost of invoicing and and packaging would have risen sharply (50 times at least) if,

indeed, the supplier would have accepted the orders at all.

There were five purchases on three days out of the month:

<u>Exhibit No.</u>	<u>Date</u>	<u>Amount</u>
RX 36-H	January 7, 1964	\$1, 523. 01
RX 36-G	January 7, 1964	479. 40
RX 36-G	January 16, 1964	599. 25
RX 36-F	January 16, 1964	479. 40
RX 36-B & C	January 22, 1964	5, 693. 73
		<u>\$8, 774. 79</u>

During this period, there were 267 separate sales made by SCJ. Analysis of RX 35 A-Z, 1-242 shows:

Total sales price (Jobbers prices)	\$3, 771. 31
Average Invoice	\$ 14. 02
Maximum Invoice (RX 35 Z-246	\$ 369. 55
Minimum Invoice (RX 35 Z, 153 & 156)	\$. 19

Those sales invoices were divided as follows:

<u>Number of Sales</u>	<u>Over</u>	<u>Under</u>
15		\$ 1. 00
38	\$ 1. 00	2. 00
63	2. 00	5. 00
59	5. 00	10. 00
80	10. 00	50. 00
8	50. 00	100. 00
<u>5</u>	100. 00	
267 Total		

Lastly, there is practically no evidence on how much of SCJ's merchandise is purchased locally. True, Mr. Dixon said he favored short supply lines. But he also said at (2051):

"Q. From what sources geographically speaking, does SCJ obtain the merchandise which it sells to (sic) its warehouse?

"A. All the way from the extreme East Coast, Long Island City, so far as I know is the farthest one east, and all points between, plus local factory warehouses in the immediate area.

"Q. Now, what determines whether you purchase from a factory warehouse located outside this area or from a local warehouse?

"A. The manufacturers."

Mr. Livoni, of Crum and Lynn, agrees to this (1775) and there is no testimony to the contrary.

On this evidence, we submit that the statement that SCJ merely duplicates that locally performed by the manufacturers and cannot save them any significant amount, is wholly unsupported by the record.

We believe the uncontradicted evidence on this point establishes beyond any doubt that the warehouse service of SCJ (and the other warehouse distributors) saves substantial sums for the manufacturers. There is no evidence as to how much is saved but the Complaint Counsel had this burden, not the respondents. Since

it is undisputed that other warehouse distributors get the same discount as SCJ, it would appear it is generally accepted throughout the industry, that warehouse distributors earn their money.

It is agreed that SCJ had no sales force, yet SCJ sold a satisfactory volume of merchandise; in fact, several witnesses have said it was the largest customer (Chadwick, 2040); Costello, 1422; Milligan, 1375; Webster, 1274), "a prestige account" (Lipscomb, 1871) and, as we will point out, the majority opinion seems to complain that our sales volume is so great it is evidence of another form of violation. Other warehouses have no salesmen (1227; 1245; 1308) (346) (1348-9). Their owners and officers do the selling. So do the officers and members of SCJ.

About the only other evidence, is to the effect that manufacturer salesmen call on SCJ jobbers about as much as on their direct jobber accounts. But these witnesses also said they call on the customers of their other warehouse distributors exactly the same (Bolander, 1116; Fleer, 1160, 1214, 1290; Chadwick, 2031, 2035, 2036; Milligan, 1363-64). The other two call on direct jobbers more than on SCJ jobbers (Costello, 1345-6; Webster, 1275).

If the burden of proof had been on petitioner, we think the Commissioner, and rightfully so, would have pushed this evidence aside. Their own rules and practice would have demanded it.

See: Automatic Canteen Co. v. Federal Trade Commission, 346 U.S. 61, 73 S. Ct. 1017.

At page 68, the Supreme Court said:

"The elusiveness of costs data which apparently

cannot be obtained from ordinary business records is reflected in proceedings against sellers. Such proceedings made us aware of how difficult these problems are, but this record, happily, does not require us to examine cost problems in detail. It is sufficient to know that whenever costs have been in issue, the Commission has not been content with accounting affidavits; a study seems to be required involving perhaps stop-watch studies of time spent by some personnel such as salesmen or truck drivers, numerical counting of invoices or bills and in some instances of the number of items or entries of such records or other quantitative measurement of the operations of a business. "

The evidence in this case not only fails to meet the foregoing standards but arrives at a result contrary to the universal practice, since it says that the warehouse discount is not justified.

Under the foregoing circumstances, we submit Complaint Counsel have utterly failed to establish that the SCJ warehouse discount is not cost justified and the contrary finding by the Trial Examiner must be restored.

III

THE COMMISSION ERRED IN FAILING TO FIND THAT THE OPERATION OF SCJ WAS WITHIN THE EXEMPTION OF §4 OF THE ROBINSON-PATMAN ACT.

Section 4 of the Robinson-Patman Act (15 U. S. C. A. §13b: Act of June 9, 1936, 592 §4; 49 Stat. 1528) reads as follows:

"Nothing in this Act shall prevent a cooperative association from returning to its members, producers or consumers the whole, or any part of the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to or through the association. "

It is to be noted that the formal findings of fact, conclusions of law and order, does not mention this point. The Opinion of the Commission by Commissioner McIntyre, supported by Chairman Dixon and Commissioner Reilly, pushes the argument aside by saying the exemption extends only to a lawful activity (4075-6).

This we submit is bootstrap reasoning. The authorities do not support the conclusion reached by the Commission.

In American Motor Specialties, Inc. v. F. T. C., 278 F. 2d 225 (2nd Cir.), cert. den. 364 U.S. 884, there was a buying group with no warehouse. The business was carried on by drop shipments from the suppliers directly to the jobbers. This, it was said, meant that the jobbers were buying in the same quantities and in

the same manner as they did before joining the cooperative and thus, did not perform the warehouse function. Hence, the granting of the volume discount itself was illegal.

Mid South Distributors v. F. T. C., 287 F.2d 512 (5th Cir.), cert. den. 368 U.S. 838 was to the same effect.

In Quality Bakers of America, Inc. v. F. T. C., 114 F.2d 393 (C. A. 1), there was a commission paid by the seller to the buyer, a violation of 2(c).

But in this case, the situation is completely different. There is no illegality, even on the Commission's own theory, until the earnings are distributed.

SCJ operates a warehouse which the Trial Examiner found (3815) was substantially equivalent to the so-called independent warehouses. Commissioner Jones agreed (4098).

The discounts granted to SCJ are the same as those given to all warehouse distributors. So there is no discrimination at this point.

SCJ sells its merchandise at jobber prices and so do the other warehouse distributors. Again, there is no discrimination shown yet.

It is only when SCJ grants a credit to its customers at the quarter's end, that the Commission makes any complaint; in short, they hold that the distribution of earnings itself is the offensive act and this is exactly what Section 4 says in plain language is not to be prevented.

Nor does it help the Commission to adopt their artificial

theory that the jobber members are in fact the purchasers from the suppliers, because §4 clearly contemplates sales by the cooperative to its members and a trading profit resulting therefrom. As said by Commissioner Elman in his dissenting opinion (4088) "unless §4 provides such an exemption, it has no meaning at all".

We concede that §4 is not a blanket exemption and does not cover a violation of the Robinson-Patman Act. If a supplier paid the cooperative or one of its members a commission (a violation of 2(d)), ^{6/} there is no doubt that §4 does not prevent prosecution, but where the distribution of profits is the one indispensable element of the alleged offense, and without which, there is no suggestion of violation. Congress has said this is not to be prevented. The Order, therefore, is in direct contradiction with the statute.

Therefore, even if all other points have been decided adversely, §4 requires that this complaint be dismissed.

^{6/} An example of such a commission appears on page 1659 -- paid by one of the "true" warehouses.

THE ORDER OF THE COMMISSION IN EFFECT
 DECLARES THAT A COOPERATIVE OPERA-
 TION IS PER SE AN ILLEGAL OPERATION
 WHICH CANNOT BE ALLOWED TO CONDUCT
 BUSINESS IN THE MANNER IN WHICH COOP-
 ERATIVES HAVE CONDUCTED BUSINESS FROM
 TIME IMMEMORIAL, AND TO THAT EXTENT,
 THE ORDER IS CONTRARY TO THE LAW AND
 IN EXCESS OF THE POWERS GRANTED TO
 THE FEDERAL TRADE COMMISSION BY THE
 CONGRESS.

The underlying theory for the majority decision is that a cooperative is illegal; SCJ is a cooperative, therefore, SCJ is illegal, and there is nothing that can be done to cure the situation.

It is not expected that this theory will be admitted but it is nevertheless, true.

All the evidence presented was only to bolster this theory by showing every detail where SCJ differed from an imaginary norm. In most instances, it developed that other warehouses did the same things.

SCJ is condemned for not having a sales force. Yet SCJ gets a most satisfactory volume of sale. In addition to the evidence mentioned in Chapter II, there was complete agreement among the warehouse witnesses that the volume of sales, and not the method, was the important thing (Tatum, 1502; Humphrey, 1586-8; Livoni, 1767; Krumbholtz, 1830, 1839).

SCJ seems to outsell the other warehouses (Milligan, 1375; Costello, 1422; Chadwick, 2040). It also secures new customers for its suppliers (Bolander, 1110; Fleer, 1225, 1227, 1300, 1306,

1321; Webster, 1272, 1279, 1280; Milligan, 1375; Costello, 1422-3; Chadwick, 2037).

And other warehouses had no more salesmen (1154, 1227, 1308, 1346). Obviously, more salesmen could not affect the legal conclusions drawn by the Commission.

Much is said about the control exercised by the members. True, many members put much time and effort into running the business for which they are not paid (2053). This is one large item in their comparative cost reduction (1662).

SCJ is castigated because it asked the opinion of its members before putting in a line of hard parts (4030). But other warehouses also survey their customers (Jacobsen, 1655; Livoni, 1783).

It is said that SCJ warehousing is "pro forma" in nature (4040) because of high turnover. It would seem that SCJ is now held at fault for too good a sales record.

The real argument seems to be that (1) because of the cooperative organization, SCJ and its members are one (4034); (2) that this makes the jobber members the purchasers; and (3) then the distribution of corporate earnings is a discount.

In essence, the majority opinion forbids vertical integration. Again, this is a fault in SCJ, but not for other warehouses. Mr. Tatum of Mopex owns a jobbing store (1506), Colyears has its own stores (Humphries, 1564-5); so does Gulf and Western (Humphries, 1565). ^{7/}

^{7/} The Wall Street Journal of July 6, 1966 reports that Gulf & Western operates 33 auto parts warehouses and 159 auto parts jobber outlets.

Crum and Lynn has difficulty selling to Colyears or Gulf and Western customers (Livoni, 1793). 8/

Since no complaints have been filed against these operations, it would seem that vertical integration is only a fault in a cooperative.

We believe the record fairly shows that this entire controversy is an attempt by A W D A to drive all cooperatives out of business and appropriate their customers (See Commissioner Elman, 4079, 4091).

We do not believe that Congress has forbidden either cooperatives, or vertical integration.

See: Report of House Judiciary Committee.

H. R. Report No. 2287: 74 Congress 2nd
Session (1936).

Here it was said:

"Any physical economies that are to be found in mass buying and distribution, whether by corporate chain, voluntary chain, mail-order house, department store, or by the cooperative grouping of producers, wholesalers, relailers or distributors . . . and whether these economies are from more orderly processes of manufacturing, or from the elimination of unnecessary salesmen, unnecessary travel expense, unnecessary warehousing, unnecessary truck or other forms of

8/ Since the hearing in this case, Crum & Lynn has been purchased by a manufacturer.

delivery or other such causes . . . none of them are in the remotest degree distributed by this bill." (Emphasis added).

As said by the Attorney General's National Committee to Study Anti-Trust Laws (1955).

Report of Attorney General's National Committee
to Study the Anti-Trust Laws (1955).

"To relate discounts or prices solely to the purchaser's resale activities without recognition of his buying functions thwarts competition and efficiency in marketing. It compels affirmative discrimination against a substantial class of distributors, and hence serves as a penalty on integration. If a businessman actually fulfills the wholesale function by relieving his suppliers of risk, storage, transportation, administration, etc., his performance, his capital investment and the saving to his suppliers are unaffected by whether he also performs the retailing function or any number of other functions. A legal rule disqualifying from discounts, recognized wholesale functions actually performed, compels him to render these functions free of charge. The value of the service is pocketed by the seller who did not earn it. Such a rule proclaims as a matter of law that the integrated wholesaler-retailer cannot possibly perform the wholesaling function; it forbids

the matter to be put to proof." (Emphasis added).

In a recent release, the Commission seems to have approved a similar idea.

See: Advisory Opinion Digest #13 CCH Trade Reports,
Paragraph 17431 (1966).

A promoter was advised there are no actionable trade restraints in a proposed plan for discount-buying membership organization which involved members paying an annual fee and allowed to buy merchandise at a state discount from the prevailing price of retail merchants. Although membership was open to anyone of the public who pays the fee (as is membership in SCJ), what about the competitive effect on the retailers whose prices are undercut?

Nor does the complaint section seem to object to a form of vertical integration resulting from captive jobbers which seem to be cultivated by some independent warehouse distributors (1567, 1805, 1835).

There are other items also. SCJ is in the wrong for buying locally (4040). This is open to all warehouses (1666) and anyhow, it is the manufacturer who determines whether the W D buys from the local warehouse or the factory (Livoni, 1755; Dixon, 2051).

Dating to SCJ seems to be wrong (2005-6); yet it is the general practice when putting in a new line (Humphries, 1541; Livoni, 1753; Steritz, 1845-6).

SCJ has an inventory of \$573, 000 to \$574, 000 (4031), yet

the warehousing of the merchandise is ignored when stating the areas of saving money (4034). This inventory and size of the warehouse compares favorably with other warehouses but again it seems that the cooperative form of organization poisons the transaction.

We submit that there is no basis for condemning a cooperative or other form of vertical integration, and that the lack of complaints against the other organizations emphasizes that this Commission is trying to put cooperatives out of business rather than to eliminate vertical integration.

SUMMARY

We submit that the evidence shows without contradiction the following:

SCJ is a cooperative organization, that it owns and operates a warehouse of 37,200 square feet in which it has an inventory of merchandise valued at more than \$570,000. This inventory was purchased in large amounts at the regular warehouse discount. SCJ got no discounts or services not given to all warehouses.

That although some drop shipments were available, SCJ has not had any drop shipments since the former order of this Court became effective.

SCJ breaks bulk and resells its merchandise to its members at jobber prices.

SCJ performs substantially the same services as other

warehouses and maintains a volume of sales which compares favorably with other warehouses.

While there is no evidence of the exact savings to the suppliers, all the evidence shows that the warehouse service does save the manufacturers or suppliers substantial sums, and that an average discount of 20% of jobbers' prices is used throughout the trade. Therefore, the Commission has failed to show that the warehouse discount granted to SCJ (and others) is not cost justified.

That, after deducting costs of operation, SCJ credits its remaining net profit arising from its trading operations, to its members in proportion to their purchases.

We contend on this evidence:

1. There is no discrimination;
2. There is no sound basis for calling the members the purchasers from the suppliers;
3. That there can be no inference of illegality drawn from the cooperative form of corporation;
4. Since the only possibility of price discrimination depends on the distribution of net earnings of a cooperative, such distribution may not be held to be the wrongful act itself as it is within the protection of Section 4.

We believe the complaint must be dismissed on any one of these contentions.

Respectfully submitted,

HARRIS K. LYLE

Attorney for Petitioners

Of Counsel
LYLE & DI GIUSEPPE

CERTIFICATE

I certify that in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/ Harris K. Lyle
HARRIS K. LYLE

